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To: Wayne, Don; Croxton, Dave; Henning, Alan; Wu, Jennifer; allison.castellan@noaa.gov; Solloway, Chris; Goo, Robert
Sent: 4/21/2014 12:35:15 AM
Subject: Agenda: (10 AM or 1 PM) April 21 OR CZARA Update (Tech Staff Only) **Non-Responsive**
Attachments: AG Opinion Dec. 20, 2006-FINAL.PDF

Hi All,

Below is the agenda. I revised the milestones/timelines but can't email it with this agenda as I wanted to make some last minute changes on Monday morning and am stuck in Spokane WA (about 275 miles from Seattle) due to **Ex. 6 - Personal Privacy** so I cannot get access to my files.

OR CZARA Update (Technical Staff Only)

April 21 at 10 AM PST or 1 PM EST

Call In Number **Non-Responsive** or Dave Croxton's Office

AGENDA

- General news and update (including whether to contact the state regarding the extension)
- Milestones & Timeline
- Coding Comments
- OSDS & New Development: Legal Authorities
- OSDS & New Development: Other Issues/Questions to Ask State Technical Staff
- Preparing for Legal April 28th Meeting: List of Issues Requiring Legal Input (NOAA/EPA authority regarding additional measures, extension, back up authorities...)
- Preparing for May 1 Managers Mtg: Initial results and thoughts from technical/legal staff level threshold review and recommendations to upper management
- Other?

Legal Authorities

1) For the New Development Management Measure (NDMM), Oregon DEQ has committed to using one of 3 options of direct legal authorities available to that agency. While there is little dispute that OR DEQ has these authorities at its disposal, the State did not specifically mention them in the legal opinion previously accepted by NOAA and EPA for use when relying on Enforceable Policies and Measures to back up voluntary approaches. Question for CZARA legal staff: Is this okay? Are we fine with this approach? More information on NOAA/EPA's Enforceable Policies & Mechanisms and OR DEQ's proposed legal authority options are provided below.

2) For the inspection element of the OSDS Management Measure, Oregon has proposed to track its voluntary approach, and has committed to using its rule-making authority [ORS 454.635] to propose rules requiring a time-of-transfer inspection, which requires adoption by the State's EQC. Since there's no guarantee of the outcome of the proposed rule, the question for CZARA legal staff is whether this is a sufficient fallback commitment to implement the management measure.

Background on Enforceable Policies and Mechanisms for CZARA. See:

<http://coastalmanagement.noaa.gov/nonpoint/docs/6217adminchanges.pdf>
and

<http://coastalmanagement.noaa.gov/nonpoint/docs/epmmemo.pdf>

NOAA and EPA will approve those program elements for which states have proposed voluntary or incentive-based programs, backed by existing state enforcement authorities, if the following is provided:

1. a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary;
2. a description of the voluntary or incentive-based programs, including the methods for tracking and evaluating those programs, the states will use to encourage implementation of the management measures; and
3. a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary.

For the NDMM, Oregon DEQ has committed to using one of the following 3 options of direct regulatory actions available to that agency to require DMAs to implement the NDMM, but the agency is not yet willing to commit to exactly which one at this point:

- 1) Develop and implement a post-construction general permit that would meet the NDMM and would align with (or be combined with) Oregon's existing construction site runoff NPDES general permit (1200-C/CN), either through DEQ's permitting authority [ORS 468B.050] or by requesting that the State's Environmental Quality commission (EQC) adopt a rule requiring these permits [ORS 4608B.020].
- 2) Develop a rule for all DMAs to meet the NDMM. The rule would require the adoption of the State's EQC [ORS 468.020; 468B.020; and 468B.110].
- 3) Designate local governments in the coastal nonpoint management area as a regulated MS4 [federal - 40CFR 122.26 and state - ORS 468B.035]

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